

June 19, 2003

The Honorable Michael Powell  
Office of the Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Suite TW-8B115  
Washington, DC 20554

**Re: NOTICE OF WRITTEN EX PARTE COMMUNICATIONS – Two Originals  
Filed in the proceeding captioned: *Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991*, CC Docket No. 02-278; CC Docket No.  
92-90**

Dear Chairman Powell:

In NARUC's November 2002 comments, the association praised the FCC for seeking comment on "... how we could work together with States that have [already] adopted do-not-call lists,"<sup>1</sup> and seeking comments on the issue of preemption. Those comments support the FCC's efforts to strengthen telemarketing sales rules, including the establishment of a national "do not call" registry, and also respectfully requests that no action be taken by the FTC concerning the establishment of a national "do-not-call" registry that would diminish, harm or place additional financial burdens upon the existing State "do not call" registries.

This letter is meant to request that whatever approach the FCC determines to take with respect to the FTC's "established business relationship" exception to the telemarketing prohibition, the Commission should assure that its rule does not preempt analogous related State common carrier regulations governing carrier-customer contacts.

Under the FTC's rules, a company has an established business relationship with a consumer who has purchased goods or services from that company within 18 months of the telephone call. The FTC's rules do not apply to common carriers. If the FTC's approach is adopted by the FCC unmodified, the regulations will have no effect on incumbent LECs' ability to contact over 90% of all potential customers because they have established business relationships (EBR) with them via their dominant provision of local service. Thus the ILECs could solicit those customers for innovative bundled service offerings. Competitive LECs' telemarketing efforts, on the other hand, would be severely constrained [limited to their shares of the toll markets for carriers like MCI and AT&T and eliminated for other new entrants.]. Some of the CLECs have argued that restricting new entrants' access to consumers would not only further entrench the incumbent LECs' monopoly in local services, but could also lead to the extension of the monopoly into all distance services. Others argue that there should be no exemption. Competition in local is in its infancy and because the BOCs have only recently gained

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<sup>1</sup> Notice at ¶ 54.

interLATA toll authority, the true impact of EBR rules in States that have imposed it is difficult to ascertain. Competitors are ramping up their marketing efforts, introducing and refining new local and bundled products, and the ILECs are still in the beginning stages of marketing long distance services.

State Commissions have a number of regulations that impact ILEC marketing. Some State "Do-Not-Call" lists have different EBR requirements. At this a critical time in the development of local competition, we believe the FCC should use the full extent of its statutory discretion to support local competition. NARUC believes, at this time in the development of local markets, specifically with respect to the EBR rule, the FCC should be clear that existing State rules affecting common carrier – customer communications are not overridden by FCC action in this docket. NARUC believes this approach accords with Congressional intent as outlined in Section 4 of the *Do-Not-Call Implementation Act of 2003* (Public Law 108-10; 108th Congress), which requires annual reports by the FTC and FCC on various aspects of the national program, including, "an analysis of the progress of coordinating the operation and enforcement of the DNC registry with similar registries established and maintained by the various States."

If you have any questions about this, or any other NARUC filing, please do not hesitate to give either of us a call. Alternatively, you could contact NARUC's General Counsel Brad Ramsay at 202-898-2207 or email him at [jramsay@naruc.org](mailto:jramsay@naruc.org).

Sincerely,

Robert B. Nelson  
Chair, NARUC Committee on Telecommunications

Carl Wood  
Chair, NARUC Committee on Consumer Affairs

cc Christopher Libertelli  
Dane Snowden  
Margaret Eglar